



ZACHARY W. CARTER
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Carrie Noteboom
phone: 212-356-2319
fax: 212-356-2069
email: cnoteboo@law.nyc.gov

July 14, 2017

By E-mail & USPS Regular Mail

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement & Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water, NYSDEC
625 Broadway
Albany, NY 12233-3506

Re: New York City Department of Environmental Protection's Sewer Backup
Prevention and Response Plan

Dear Mr. McKenna and Mr. DiMura,

On May 31, 2017, the New York City Department of Environmental Protection (DEP) provided the United States Environmental Protection Agency (EPA) with DEP's Sewer Backup Prevention and Response Plan (Plan). The Plan documents the City's robust existing program to respond to and reduce sewer backups, and describes DEP's Targeted Sewer Inspection Pilot (TSIP), a new pilot program of targeted sewer inspections, which is intended to help prevent sewer backups in specific areas of the City. DEP has completed the TSIP Pilot Development Phase and, on July 1, 2017, commenced the TSIP Pilot Phase, which will continue for three years, in Community Boards 313 and 315 in Brooklyn, and Community Boards 412 and 413 in Queens.

By letter dated June 14, 2017, EPA stated that it was generally pleased with the Plan and offered several comments and questions about the Plan. Set forth below is our response to each comment and question.

1. Semi-Annual Meetings

As EPA notes, DEP has offered to meet with EPA on a semi-annual basis during the three-year period of the pilot program. We believe it would be the most efficient use of both DEP's and EPA's time if we were to provide updates on pilot implementation in advance of the semi-annual meeting; DEP requires 30 days following the end of each six-month pilot period to gather and QA/QC the data. Accordingly, we recommend the following schedule for the semi-annual meetings:

January 31, 2018	Provide EPA data – (data to cover period July 1, 2017 – Dec 31, 2017)
Mid-February 2018	Hold first semi-annual meeting
July 28, 2018	Provide six-month data (data to cover period January 1, 2017 – June 30, 2018)
Mid-September 2018	Hold second semi-annual meeting (in recognition of difficulty of scheduling meetings in August)

Meetings in 2019 and 2020 could follow the above pattern or be adjusted as appropriate.

We note that EPA has stated that the data should include the metrics set forth in paragraph 63(j) of the AO. We are evaluating the feasibility of reporting this information for areas covered by the TSIP, and would like to discuss this with EPA at the first semi-annual meeting in 2018. EPA has also stated that DEP should report on the status of major milestones; our data package will report on TSIP implementation. Finally, EPA stated that the data should include a compliance certification; DEP will submit the information under cover letter, as was the Plan.

2. Sewer Backup Benchmark

EPA states that it expects that DEP will develop a "Sewer Backup Benchmark" by October 31, 2020. As stated in the Letter, the Pilot may result in the identification of additional performance metrics related to sewer backups. We expect that DEP and EPA will discuss this topic further as we get deeper into the results of the Pilot.

3. Implementation Schedule

EPA seeks clarification as to whether the three-year period for the Pilot is part of the seven-year schedule pursuant to paragraph 62(e)5 of the AO. As stated in the Plan, DEP will conduct the Pilot for three years, and, based on the results of the Pilot, will evaluate how it may use lessons learned from the Pilot to reduce SBUs in other areas of the City as part of its ongoing program.

4. Fats, Oils and Grease Program

DEP's Plan describes a robust focus on Fats, Oils and Grease (FOG), including education targeted to apartment building occupants and superintendents. DEP has considered the feasibility and practicality of requiring the installation of grease interceptors in apartment buildings. Given current technology, DEP has concluded that such installations are not a viable solution. If cost-effective technology becomes available in the future, we can consider whether it is practical and warranted at such time.

5. Terminology

EPA requests that DEP add a definition for "recurring backup" to the Plan. Section 3.2.2 of the Plan notes that DEP designates street segments with more than one Confirmed SBU within a rolling three-month period as SBU Operations and Analysis Plan (SOAP) Segments. DEP will update the Plan to include this existing definition in the Terminology section, as follows: Recurring SBU: A street segment with more than one Confirmed SBU in a rolling three-month period.

6. Recurring Backups

EPA requests that DEP define a backup that would trigger a referral to DEP's SOAP as a backup that occurs more than once in a segment in a rolling one-year period. DEP has determined that the current trigger, a backup that recurs more than once in a rolling three-month period, should remain the trigger to ensure the data collected over the three-year Pilot period remain consistent with existing program data. At the end of the Pilot period, DEP can consider whether to revise the trigger.

7. TSIP Report

EPA seeks a report on the TSIP after completion of the pilot phase and specifies the date of November 30, 2020. DEP notes that it will require time, upon completion of the pilot, to process and assess the data. Accordingly, DEP will prepare a report by January 31, 2021 and will provide a copy to EPA.

8. Program Expansion

EPA states that DEP should list the Community Districts included in the Pilot in the Plan. DEP included that information in the May 31, 2017 Letter to EPA that accompanied the Plan. EPA requests that DEP provide details of the TSIP Implementation and Expansion by November 30, 2020. DEP will include any such information in its January 31, 2021 report.

9. Connection Between TSIP and SBU Response System

EPA requests that DEP explicitly state in the Plan that findings from TSIP will trigger work orders and/or other actions and that the Plan will be revised to reflect lessons learned from the pilot. As noted in section 4 of the Plan, the TSIP will supplement DEP's current SBU response system, as described in Section 3 of the Plan. Thus, as with any other sewer inspections, inspections conducted under the pilot will trigger work orders and other

corrective actions as appropriate. In addition, the Plan currently states in section 4.3 that DEP would consider the data collected during the TSIP to evaluate how we may use lessons learned to reduce SBUs in other parts of the City. Thus, DEP does not believe any revisions to the Plan are necessary in response to this comment.

10. Unconfirmed SBUs

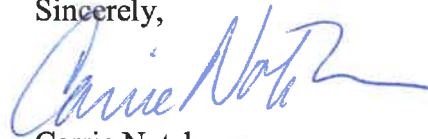
EPA asks whether DEP will map and conduct GIS analysis of unconfirmed SBUs. DEP does not currently map unconfirmed SBUs, as DEP's program is focused on addressing confirmed SBUs as our highest priority. As DEP continues to refine the program we can consider adding this analysis, and we can discuss this further with EPA at the semi-annual meetings.

11. SBU Response Checklist

EPA requests that DEP include in the SBU Response Checklist (i) the same condition rating for manholes found in the checklist DEP uses for its manhole inspections and (ii) a list of all acronyms spelled out. DEP intends to make these changes to the SBU Response Checklist, and the associated changes to the Hansen database, this fall.

Finally, EPA has requested that DEP submit a revised Plan by July 14, 2017. As noted above, DEP is making two revisions: the addition of a definition of "Recurring SBU" to the Terminology section and an updated SBU Response Checklist in Appendix 1. As it will take a few months to update the Hansen database with the new Checklist items, DEP will provide a copy of the revised plan in advance of our first semi-annual meeting. As stated in our May 31, 2017 Letter, we note that by providing a copy of a Plan, or responding to EPA comments about the Plan, the City does not concede that EPA has jurisdiction under the Clean Water Act to regulate sewer backups that do not reach the waters of the United States. Furthermore, the City and DEP reserve all rights, claims and defenses they may have to EPA's Administrative Compliance Order, CWA-020-2016-3012, dated August 31, 2016, and do not waive any rights, claims or defenses by submission of this letter or the Plan. Neither the City nor DEP admits any allegation in the Administrative Compliance Order, and neither the City nor DEP admits or concedes any liability under federal or state law based on the allegations in the Administrative Compliance Order.

Sincerely,



Carrie Noteboom
Senior Counsel
Environmental Law Division

c: Robin Levine
Susan Amron
William Plache